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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3989 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOKALBHAI DEBHABHAI GADHVI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3989 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR S.S.PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985

('the Act' for short), District Magistrate, Panchmahals, Godhra, vide order dated April 1, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated April 1, 2001 manifest that the petitioner is a prohibition bootlegger and a dangerous person within the meaning of Sections 2(b) and 2(c) of the Act as two cases for commission of the offences under the Prohibition Act and three cases for commission of the offences under IPC are registered against the petitioner which are pending trial. Besides this, statements of five anonymous witnesses are recorded in an unregistered offences, and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and public health and, therefore, power under Section 9(2) of the Act is exercised by the detaining authority by not disclosing the names of the witnesses and accordingly detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Ms Subhadra Patel, learned advocate for the petitioner has restricted her arguments only on the aspect of delay in recording the order of detention without recording satisfactory explanation on the part of the detaining authority and therefore, order of detention is vitiated. In order to substantiate her argument she contended that in the order of detention, the detaining authority has considered five cases for commission of the offence under Prohibition Act as well as under IPC, out of which five cases, are of year 1999 and two cases are of year 2000. The last case was registered against the petitioner/detenu on August 3, 2000 and the order of detention came to be passed on April 1, 2001, that is, after delay of about nine months. Therefore, there is a delay of nine months in passing the order of detention which is not explained by the detaining authority. She, therefore, urged to allow the petition by quashing and setting aside the order of detention and setting the petitioner at liberty forthwith.

5. Mr. S.S.Patel, learned AGP appeared on behalf of

the respondent State and has opposed the petition by making oral submissions. He also conceded that there is no satisfactory explanation by the detaining authority in the order of detention justifying the delay in passing the order of detention. He, however, does not dispute the factual aspect that the order of detention is passed after a period of nine months. He, therefore, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the petition and the documents annexed therewith. I have also considered the impugned order of detention passed by the detaining authority.

7. There is no manner of doubt that last offence against the petitioner came to be registered on August 3, 2000 for commission of the offence punishable under Sections 447 and 452 of the IPC and the order of detention came to be passed on April 1, 2001 and, therefore, there is a delay of nine months in passing the order of detention which is not explained either in the order or by filing reply affidavit on behalf of the detaining authority.

8. In the case of ANAND PRAKASH V. STATE OF UP, AIR 1990 SC 516, it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

9. A similar view is also expressed by this Court in the case of ELESH NANDUBHAI PATEL V. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1997 (1) GLH 381. Applying the principles enunciated by the Supreme Court and this Court in the aforesaid two judgements to the facts of the present case, it is clear that the present case is identical to the case referred to above. In the present case also the last offence against the petitioner came to be registered on August 3, 2000 for commission of the offence under Sections 447 and 452 of the IPC whereas the order of detention came to be passed on April 1, 2001 and, therefore, unexplained delay makes the ground of detention not proximate and vitiate the order of detention itself. Therefore, on the ground of delay alone, the order of detention is vitiated.

10. For the foregoing reasons, petition succeeds and

is accordingly allowed. The impugned order of detention dated April 1, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*